

## Assembly Bill No. 2288

### CHAPTER 780

An act to amend Section 422.7 of the Penal Code, relating to crimes.

[Approved by Governor September 24, 2004. Filed  
with Secretary of State September 25, 2004.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2288, Pacheco. Hate crimes.

Under existing law certain hate crimes are punishable by imprisonment in the state prison or in a county jail not to exceed one year, by a fine not to exceed \$10,000, or by both, if the crime is committed (1) against the person or property of another to intimidate or interfere with that other person's free exercise or enjoyment of any legal or constitutional right, and (2) because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the defendant perceives that the other person has one or more of those characteristics, and (3) under specified circumstances, including, among other things, that the crime against property causes damage in excess of \$500.

This bill would lower the property damage amount to \$400. Because this bill would expand the scope of an existing crime, it would impose a state-mandated local program.

This bill would incorporate additional changes to Section 422.7 of the Penal Code proposed by SB 1234, contingent upon the prior enactment of that bill.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 422.7 of the Penal Code is amended to read:

422.7. Except in the case of a person punished under Section 422.6, any crime that is not made punishable by imprisonment in the state prison shall be punishable by imprisonment in the state prison or in a county jail not to exceed one year, by a fine not to exceed ten thousand dollars (\$10,000), or by both that imprisonment and fine, if the crime is

committed against the person or property of another for the purpose of intimidating or interfering with that other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the defendant perceives that the other person has one or more of those characteristics, under any of the following circumstances, which shall be charged in the accusatory pleading:

(a) The crime against the person of another either includes the present ability to commit a violent injury or causes actual physical injury.

(b) The crime against property causes damage in excess of four hundred dollars (\$400).

(c) The person charged with a crime under this section has been convicted previously of a violation of subdivision (a) or (b) of Section 422.6, or has been convicted previously of a conspiracy to commit a crime described in subdivision (a) or (b) of Section 422.6.

SEC. 1.1. Section 422.7 of the Penal Code is amended to read:

422.7. Except in the case of a person punished under Section 422.6, any hate crime that is not made punishable by imprisonment in the state prison shall be punishable by imprisonment in the state prison or in a county jail not to exceed one year, by a fine not to exceed ten thousand dollars (\$10,000), or by both that imprisonment and fine, if the crime is committed against the person or property of another for the purpose of intimidating or interfering with that other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States under any of the following circumstances, which shall be charged in the accusatory pleading:

(a) The crime against the person of another either includes the present ability to commit a violent injury or causes actual physical injury.

(b) The crime against property causes damage in excess of four hundred dollars (\$400).

(c) The person charged with a crime under this section has been convicted previously of a violation of subdivision (a) or (b) of Section 422.6, or has been convicted previously of a conspiracy to commit a crime described in subdivision (a) or (b) of Section 422.6.

SEC. 2. Section 1.1 of this bill incorporates amendments to Section 422.7 of the Penal Code proposed by both this bill and SB 1234. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 422.7 of the Penal Code, and (3) this bill is enacted after SB 1234, in which case Section 1 of this bill shall not become operative.



SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

